

# **EXHIBIT 23**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

6 ePLUS, INC. : Civil Action No.  
7 vs. : 3:09CV620  
8 LAWSON SOFTWARE, INC. : September 27, 2010

11 COMPLETE TRANSCRIPT OF THE FINAL PRETRIAL CONFERENCE  
12 BEFORE THE HONORABLE ROBERT E. PAYNE  
13 UNITED STATES DISTRICT JUDGE

APPEARANCES:

16                   Scott L. Robertson, Esquire  
17                   Michael G. Strapp, Esquire  
18                   Jennifer A. Albert, Esquire  
19                   Goodwin Procter, LLP  
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## Volume I of II

24 Peppy Peterson, RPR  
25 Official Court Reporter  
United States District Court

1 out. Okay? Everybody is shaking their head yes.

2 Ten, contract documents between Lawson and its  
3 customers.

4 MS. STOLL-DeBELL: So, Your Honor, I would actually  
5 put -- I categorize these slightly differently. I had a  
6 category for documents relating to products they have not  
7 accused of infringement. PX-253 relates to that. It relates  
8 to this LSF or System Foundation, and then on the next page as  
9 part of category 11, PX-455, 456, and 506 relate to both System  
10 Foundation, something called Smart Office and ProcessFlow 9.

11 THE COURT: Why are we having evidence on things that  
12 aren't accused of infringement?

13 MR. ROBERTSON: They are accused, Your Honor, and  
14 you've already ruled on this. This was Lawson's motion in  
15 limine that you said was denied as moot and you needed to hear  
16 the evidence. This has to do with all the same functionality  
17 they are talking about.

18 The witnesses will say that Lawson System Foundation  
19 is sold with the infringing system, is necessary to the  
20 infringing system, and can't operate without it. It is part  
21 and parcel of the infringing system. They just want it out of  
22 the case. Your Honor ruled on this.

23 THE COURT: Why would it be denied as moot as opposed  
24 to being denied without prejudice to dealing with it?

25 MR. ROBERTSON: Well, it was denied as moot because

1       It is just like the computer. It's something that is needed to  
2 run the accused software, but that doesn't mean it infringes  
3 it, and it doesn't mean that we even need to get into it at  
4 trial.

5               If it was so important, Mr. Niemeyer would have  
6 explained something more than one little sentence in there. If  
7 it was so important, Dr. Weaver would have said more than you  
8 need it to run the software --

9               THE COURT: I have to agree with you. I'm baffled by  
10 this. You're going to have to brief and show me how -- A,  
11 you're going to have to show me the case law that says you can  
12 do what you're trying to do, and, B, you have to show me in  
13 Weaver's and Niemeyer's report where they say that, because all  
14 I see is one sentence.

15               MR. ROBERTSON: I will do that, Your Honor. Mr.  
16 Niemeyer remembers just looking at source code, didn't talk  
17 about infringement, didn't talk about claims. That's why his  
18 report was fairly focused.

19               Let me just say one other thing, though. I'd agree  
20 with Ms. Stoll-DeBell that when the Lawson Software Foundation  
21 is being used with some other modules to make that system  
22 operate, it's not an infringement, but when it's being used to  
23 make the procurement system operate, that is an infringing  
24 system.

25               So we don't accuse it standing alone, or we don't

1                   THE COURT: That will be fine. We're dealing  
2 with a lot of things. If we have a problem, we'll  
3 deal with them.

4 You-all need to come get your book of  
5 exhibits. These belong to Ms. Stoll-DeBell. Leave my  
6 stuff right here on my desk if you will.

7 We will see you-all in the morning at 11.

8 MR. ROBERTSON: You said 9:30, Your Honor.

9                   THE COURT:  9:30 is a criminal matter.  Would  
10 you like to come over for that?

11 All right.

13 (The proceedings were adjourned at 5:31 a.m.)

15 I, P.E. Peterson, certify that the foregoing  
16 is a true and accurate transcription of my  
17 stenographic notes.

18 // /s/ 10/04/10

19 P.E. PETERSON, RPR, CCR

— — — — —  
DATE

21 I, Diane J. Daffron, certify that the  
22 foregoing is a true and accurate transcription of my  
23 stenographic notes.

24 / 64 / 10

DIANE J. DAFFRON RPR CCR

— DATE



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1 six, because at that point we're saying what the system  
2 actually does. Lines seven through nine are clearly relevant  
3 to show what the Blount Hospital system does and does not have.  
4 It doesn't not give users access to catalogs.

5 THE COURT: Well, I think the way -- if you review  
6 the whole thing in context, it's misleading and confusing.  
7 Objection sustained to line four through nine of page 134.  
8 Next?

9 MR. STRAPP: That's all we have for Oliver.

10 THE COURT: Tolkmitt.

11 MR. SCHULTZ: Your Honor, if I could take one moment  
12 for this. Counsel, Ms. Albert and I, talked about this  
13 yesterday, and there's one issue that's involved with Mr.  
14 Tolkmitt's deposition. It does not relate to the LSF, the  
15 Lawson System Foundation, and Smart Office. That is on page  
16 175, lines ten through 12. We are withdrawing our objection to  
17 that designation.

18 The remainder of the document is only related to the  
19 LSF, Process Flow, and Smart Office which the parties are  
20 briefing on, Your Honor. It's our proposal that we include  
21 these designations after that briefing has been concluded to  
22 determine what is on the relevance of the LSF, Process Flow,  
23 and Smart Office.

24 MS. ALBERT: If I can address that, I agree that the  
25 remaining designations relate to this issue of the Lawson

1                   MR. SCHULTZ: Just to confirm, that's 63:6 through  
2 25?

3                   MR. STRAPP: That's correct. Page 91, line nine  
4 through line 15, objection withdrawn.

5                   THE COURT: I don't even have that on my papers.

6 It's not on the papers anywhere, so it's withdrawn. So what  
7 else? Next one I have is 121:7 through 22.

8                   MR. STRAPP: I think that Lawson has designated page  
9 99, line 25, through page 101, line 13; is that correct?

10                  MR. SCHULTZ: That is correct.

11                  MR. STRAPP: And --

12                  THE COURT: 91 through what?

13                  MR. STRAPP: Page 99, line 25.

14                  THE COURT: 99 it is, but not 91.

15                  MR. STRAPP: Line 25 through 101, line 13.

16                  THE COURT: Let me get there. What are you doing  
17 with that?

18                  MR. STRAPP: That's Lawson's objection, so I'll let  
19 Lawson...

20                  MR. SCHULTZ: Okay, this line of testimony deals with  
21 Exhibit 14 which is in the testimony. That exhibit is  
22 Exhibit 253 that deals with the LSF, the Lawson System  
23 Foundation, which the parties are going to do additional  
24 briefing on.

25                  It is our position that if LSF is not relevant, which

1 we do not believe it is, this testimony also is not relevant  
2 and should not be --

3 THE COURT: But if it is relevant, it comes in.

4 MR. SCHULTZ: Yes.

5 THE COURT: Do you agree?

6 MR. STRAPP: I agree generally with respect to the  
7 last portion of the designation. Starting at page 101, line  
8 one, through page 101, line 13, the earlier portion of the  
9 designation, starting on page 99, line 25, through page 100,  
10 line 25, that testimony is generally relevant not just to the  
11 LSF issue because it's about the contract that was entered into  
12 between Lawson and Novant for the services that Lawson provided  
13 Novant including but not limited to LSF.

14 It includes also other software modules at issue in  
15 this case. So we will agree that page 101 comes in and rises  
16 and falls with the briefing on LSF, but the remainder should  
17 come in regardless.

18 MR. SCHULTZ: Your Honor, if that's the case with  
19 respect to Exhibit 14, which is Plaintiff's Exhibit 253, we'd  
20 ask that the plaintiff, Plaintiff's Exhibit 253 be redacted so  
21 it does not have the LSF line on it. If that was the case, we  
22 would agree to that testimony being admitted.

23 MR. STRAPP: We'll have to review the document, but I  
24 think that may be acceptable. Of course, if the decision is  
25 LSF is relevant, then the document would come in under that.

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3 I certify that the foregoing is a correct transcript  
4 from the record of proceedings in the above-entitled matter.

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7                   /s/  
8 P. E. Peterson, RPR

\_\_\_\_\_ Date

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